

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.377 of 1998

with

CIVIL APPLICATION No.307 of 1998

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For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
  2. To be referred to the Reporter or not? YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
  5. Whether it is to be circulated to the Civil Judge? NO
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GUJARAT ELECTRICITY BOARD

Versus

VIKRAM RAJABHAI VISANA

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Appearance:

MR HS MUNSHAW for Petitioners

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CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 21/04/98

ORAL JUDGEMENT : (Per J.N. Bhatt, J.)

1. Life of one Maniben Vikram, who was aged about 34 years was cut short by the cruel hands of destiny on 7.9.1992 at about 3.00 PM in a Piatwadi in village Vachhoda while she was busy in agricultural labour work on account of fall of live wire of the Gujarat

Electricity Board ("GEB" for brevity). She was earning member of the family by doing cattle grazing, milk selling, poultry and agricultural operations. The impact of electrocution was so much bad that it entailed instantaneous death.

2. The respondents, who are the original plaintiffs claimed an amount of Rs.4,20,000/- by way of compensation by filing Special Civil Suit No.30 of 1993 in the court of learned Civil Judge, Senior Division, Porbandar ("the trial court" for brevity) inter alia contending that the death of Maniben was the outcome of the negligence on the part of the GEB and its personnel in not maintaining properly the wires and therefore, they contended that they are entitled to an amount of Rs.4,20,000/-, as the deceased was a young, energetic earning member of the family. According to the claimants the deceased was earning to the extent of Rs.18,000/- per month.

3. The appellants were the defendants, who appeared and resisted by filing application, exhibit 26 wherein they have inter alia contended that live electric wire was broken down on account of heavy wind in the open farm and the deceased came into close contact with the wire and suffered fatal injuries. Thus, according to the case of the GEB it was not a case of negligence or carelessness, but was a case of natural calamity and an act of God. The amount of compensation was also questioned.

4. After considering the facts and circumstances of the case, issues raised at exhibit 27, the pleadings of the parties and the evidence of three witnesses, the trial court reached to the conclusion that the deceased Maniben had died due to negligence and careless act on the part of the original defendant-appellant Board herein on account of falling of a live electric wire of the defendant-Board. The trial court found that the deceased was earning member of the family and assessed monthly income of the deceased at Rs.1000/- per month against the claim of Rs.1500/- per month. After deducting Rs.200/towards personal expenses of the deceased. The annual utility of the deceased to the common family fund was assessed at Rs.800 x 12 = 9600/- and adopted 20 multiplier. The trial court thus awarded total amount of Rs.1,92,000/- and an additional amount of Rs.10,000/- by way of lump sum towards funeral rites and religious activities. Therefore, the total amount awarded comes to Rs.2,02,000/-.

5. Learned advocate for the appellants has

questioned that the quantification and damages made by the trial court in respect of death of the deceased Bai Maniben is at a higher side and excessive and that it was contended that the multiplier 20 is also very higher. Be it noted that when the future earning or prospective potential earnings of the deceased or the victim of road accident, as the case may be, is one of the important aspects which requires consideration so as to reach and determine just and reasonable amount of compensation as far as possible in terms of money. As otherwise, the loss of limb or loss of life is invaluable. Since the trial court has not considered the prospective earnings of the deceased the multiplier 20 is adopted. If we consider the prospective income of the deceased the multiplier obviously would come to 15 instead of 20. So overall result or the consolidated total amount of compensation in any case would not be less than 2,02,000/-, as awarded by the trial court. It is true that the multiple should not have taken at 20. It ought to have been 15, as contended. It is equally true that this submission implies that the court or tribunal, as the case may be, is obliged to consider not only the income then prevailing on the unfateful day of the accident, but also has to consider the income of the deceased or the victim, in future or prospective earnings and future income and it ought to be reflected in the assessment of amount of compensation, which would be just and reasonable on the facts and in the circumstances. Therefore, in our opinion, though the multiplier 20 is higher, it would not mean that the higher amount or excessive amount of compensation is awarded under the impugned decree for the simple reason that the court has not appreciated or taken into consideration the prospective earnings of the deceased. Therefore, in our opinion, this is a matter wherein no merit is, successfully, spelt out.

6. In the result, the appeal is required to be dismissed at the threshold. We have had the benefit of examining the documentary evidence and oral evidence relied upon by the trial court and the parties before the trial court as the copies of the evidence had been furnished to the court by the learned advocate appearing for the appellants in the course of his submissions.

7. Before parting we would like to sound a caution and make a direction. It appears from the impugned decree that the trial court has permitted to withdraw 50 per cent of the amount awarded at a stretch and the direction is restricted for deposit only in respect of the remaining 50 per cent amount, to which in our view

could not be said to be compatible, consistent with the directions and observations of this Court in a Division Bench case, *Muljibhai Ajarambhai Harijan & another v. United India Insurance Co. Ltd. & others*, 1982 (1) GLR 756 and approved by the Honourable Supreme Court.

8. Insofar as the question of apportionment of the amount of compensation is concerned it appears that the attention of the trial court had not been drawn. In the light of the facts and circumstances and the age and extent of the dependency upon the earnings of the deceased, we are directing the amount of compensation to be apportioned in the ratio of 25 per cent each to all the four plaintiffs. In other words, the plaintiff no.1 - Vikram, husband, plaintiffs nos.2, 3 and 4, who are minor children of the deceased, all shall be entitled to 25 per cent of compensation. No doubt, amount of interest shall be paid to plaintiff no.1, husband of the deceased.

9. Insofar as the question of disbursement is concerned the directions contained in the impugned judgment and decree are required to be modified. The appellant - original defendant Board is directed to deposit full amount with cost and interest within the period of four weeks from today. The trial court is permitted to disburse 10 per cent of the amount of the award to the original plaintiff no.1 - Vikram, the husband of the deceased by account payee cheque for himself and for the welfare of the minors, after deducting an amount of 10 per cent. That 10 per cent amount shall be apportioned in the ratio of 25 per cent as stated hereinabove and the amount coming to the share of each plaintiff shall be deposited in Fixed Deposit Receipt ("FDR" for brevity) of any nationalised bank or any Government undertaking or Corporation yielding higher rate of interest for a spell not less than five years and the interest accrued thereon shall be payable to plaintiff no.1, father of the minors until they attain majority, for their upkeep and welfare and the FDR will be renewed until minors attain the age of majority.

10. With these observations and directions, we dismiss this appeal. No order as to costs.

11. No orders on Civil Application No.307 of 1998.

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